

Standing Operating Procedure (SoP) for Adjudication of Private Money Lending Cases 2022

1. Jurisdiction

- i. The Court of competent jurisdiction shall accept all the monetary cases irrespective of the amount and the date of lending; and
- ii. All the courts shall adjudicate private monetary cases as per this SoP.

2. Financial Services as per Section 11 of the Financial Services Act of Bhutan 2011¹

- i) Any person who provides financial services (lending) for business purpose shall:
 - a) Have obtained license from the concerned authority; and
 - b) Have charged interest in lending.

- ii) **Penalty**
 - a) Any private money lender who had lent money without license shall be considered as offence under section 11 of Financial Services Act of 2011 and shall be punished as per section 15(a)² of the Financial Services Act of Bhutan 2011.
 - b) Any private lender without License who have charged interest higher than what is prescribed under section 17(1)³ of Movable and Immovable Property Act of the Kingdom of Bhutan 1999, shall be punished as per section 398⁴ and 399⁵ of Usury law under the Penal Code of Bhutan, 2004.
 - c) Punishment under clause (a) & (b) shall be consecutive and both the borrower and lender shall be held liable.
 - d) In pursuance with section 5⁶ of the Penal Code of Bhutan 2004, an offence under this rule shall be graded accordingly by the Court with the gravity of the offence.

¹No person shall offer financial services as a business without obtaining the appropriate license under this Act or the regulations under it; nor shall any individual fulfil a function on behalf of a financial services business without the license or registration, if any, required by this Act or the regulations under it.

²Any person who knowingly engages: a) Without a license required under this Act in activity for which such is required, commits an offence and on conviction shall be fined the minimum wage at the time of the crime for a period extending from fifteen to thirty years and liable for misdemeanour;

³Interest:- Except as otherwise provided by this Act, or any other Act of the Kingdom of Bhutan, any person may stipulate for, allow and exact, in any contract or agreement, any rate of interest or discount that is agreed upon by the parties to the transaction; provided, however, that no lender other than a registered financial institution which has been duly licenced to engage in the extension of credit, may charge interest greater than 15 percent per annum expressed as a simple annual rate.

⁴A defendant shall be guilty of the offence of usury, if the defendant is not authorized or permitted by law to do so and charges, takes, or receives any money or other property as interest on a loan or forbearance of any money or property at an interest rate that exceeds the rate offered under the law.

⁵The offence of usury shall be a petty misdemeanour.

⁶ An offence defined under other laws of Bhutan and that are not graded under those laws shall be graded accordingly by the Court with the gravity of the crime.

3. Financial Services for non-business purpose

- i. As a small nation with closely integrated society, lending and borrowing money for non-business purposes between individuals at the time of pressing need and urgent requirement has been in existence in the country from the time immemorial. *Ex-grata* lending and rendering of help enhances community vitality, harmony and peaceful coexistence among our citizens. Hence, it shall be interpreted that lending for non-business purpose is allowed under Chapter 3 of the Financial Service Act of Bhutan 2011 as long as such lending does not involve reciprocity in the form of interest leading to lending businesses.
- ii. Financial services for non-business purpose should be interpreted as the lending which does not involve charging interest for profit-making. However, in the civil case proceeding, if it has come to the knowledge of the court and subsequently be proven that interest has been clubbed with principal amount in the agreement, such cases shall be treated as lending for business purpose.

4. Fraudulent Cheque Writing

- i. The dishonoured cheque shall be considered as offence under section 131⁷ of the Negotiable Instrument Act 2000 and shall be punished as per section 111⁸ of the Negotiable Instrument Act of the Kingdom of Bhutan 2000, which is value based sentencing in accordance with section 18 of Penal Code of Bhutan.
- ii. In the civil case proceeding, the Court shall take cognizance of dishonoured cheque as per Section 135(a)⁹ of Negotiable Instrument Act 2000 and consider as fraudulent cheque writing. If the dishonoured cheque amount, based on value based sentencing falls misdemeanour and below, then the court shall adjudicate such cases together with civil case. However, if dishonoured cheque amount, based on value based

⁷If a person issues or passes a cheque knowing that the drawee will not honour it, or where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be guilty of the offence of fraudulent cheque writing and shall, without prejudice to any other provision of this Act, shall be a value-based sentencing.

⁸The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules: (a) the holder is entitled to the amount due upon the instrument together with the expense properly incurred in presenting it or towards its dishonour; (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places; (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at fifteen per cent per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment; (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places; (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured. If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

⁹Notwithstanding anything contained in any law for the time being in force, - (a) no court shall take cognizance of any offence punishable under section 131 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque.

sentencing falls within felony, Court shall refer such cases to RBP for investigation and prosecution.

- iii. While adjudicating the cases relating to dishonoured cheque writing, the Court shall give due regard on finding out whether cheque was obtained under coercion, duress or undue influence and accordingly punish the defendants.
- iv. If the payee (person who receives the cheque) has been found to have accepted the cheque knowing that there was no bank balance, both drawer and payee shall be held liable.